

REMARKS

Favorable reconsideration of the present application is respectfully requested.

Claims 1, 3, 5-13, 16, 18, and 20-30 are presented for examination in this application. Claims 2, 4, 14, 15, 17 and 19 have been canceled without prejudice or disclaimer and Claims 1, 3, 5-10, 16, 18, 20- 23, and 25-30 have been amended without the introduction of any new matter.

The outstanding Office Action includes a rejection of Claims 1-3, 7-18, and 23-30 under 35 U.S.C. §103(a) as being unpatentable over Wakamoto et al. (U.S. Patent No. 6,277,533, Wakamoto).

Applicants gratefully acknowledge the indication that Claims 4-6 and 19-22 are only objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all the limitations of the base claim and any intervening claims.

Instead of rewriting Claim 4 in independent form, parent independent Claim 1 has been amended to include the limitations of canceled Claim 4 as to synchronously moving the mask and the substrate with respect to an illumination light along a synchronous moving direction of the substrate while determining a spatial frequency distribution of the divided area as the previously claimed surface condition. The decision as to using either the first focusing control mode or the second focusing control mode is now further recited by Claim 1 as depending on this spatial frequency distribution of the divided area determined in the determining step and a width of an illumination area on the substrate in the synchronous moving direction rather than the previously recited surface condition. As it is clear that Wakamoto does not teach or suggest these features imported from canceled Claim 4 as well as not teaching the use of any other surface condition to decide on an appropriate focus mode, as admitted at

page 3 of the outstanding Action, the lack of any establishment of any motivation whatsoever to modify Wakamoto in this claimed manner renders a rejection of amended Claim 1 over Wakamoto clearly untenable. See MPEP 2143 .01 (Rev. 1, Feb. 2003) and its emphasis on the need to rely on objective evidence as to motivation as to the In re Lee decision (277 F.3d 1338, 1342-44, 61 USPQ2d 1430, 1433-34 (Fed. Cir. 2002)) cited therein.

Similarly, apparatus Claim 16 has been amended to include the limitations of canceled apparatus Claim 19 as to also synchronously moving the mask and the substrate with respect to illumination light along a synchronous moving direction of the substrate while a control system decides the focus control mode to use based upon a spatial frequency distribution of the divided area and a width of an illumination area on the substrate in the synchronous moving direction. As it is again clear that Wakamoto does not teach or suggest these features imported from canceled Claim 19 as well as not teaching the use of any other surface condition to decide on an appropriate focus mode, as admitted at page 3 of the outstanding Action, the lack of any establishment of any motivation whatsoever to modify Wakamoto in this claimed manner renders a rejection of amended Claim 16 over Wakamoto also clearly untenable for the reasons discussed above.

Independent Claim 23 has also been amended in a manner similar to independent Claims 1 and 16 and should also be considered to patentably define over anything reasonably taught or suggested by Wakamoto for the reasons noted above as to these independent claims.

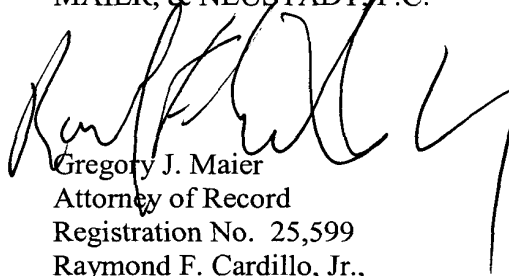
Furthermore as dependent Claims 3, 5-13, 26 and 30 ultimately depend from independent Claim 1, dependent Claims 18, 20-22, 27 and 28 ultimately depend from independent Claim 16, and dependent Claims 24, 25, and 29 ultimately depend from

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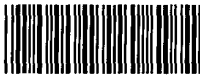
independent Claim 23, these dependent claims should also be considered to patentably define over anything reasonably taught or suggested by Wakamoto for the reasons noted above as to these independent claims. In addition, each of these dependent claims add further features to the recited features of their respective parent claims and should further be considered to patentably define over anything reasonably taught or suggested by Wakamoto for this reason as well.

As no further issues are believed to be outstanding relative to this application, it is respectfully submitted that this application is clearly in condition for formal allowance and an early and favorable action to that effect is, therefore, respectfully requested.

Respectfully submitted,
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